

May 4, 2011

Mark Sanders 16075 Skyline Boulevard Woodside, California 94062

SUBJECT: Alleged Violations of Permit Requirements at Westpoint Harbor, 1529 Seaport Boulevard, Redwood City, CA 94063 (BCDC File Nos. ER10-13 and 2-02)

Dear Mr. Sanders:

It was a pleasure meeting with you on April 17th and I want to thank you again for taking time to speak with me and review some of the completed portions of Westpoint Harbor & Marina. Per our discussion, I have been reviewing the Amended BCDC Permit file No. 2-02 regarding the alleged noncompliance with permit conditions, as well as alleged unauthorized development at the Marina. I am also in receipt of your letter dated April 18, 2011, responding to some of the issues raised in Will Travis' letter to you dated April 11, 2011.

Based on my review of Amended Permit File No. 2-02 and my site visits, there does appear to be a number of outstanding violations of your permit, several of which can be easily resolved, as noted below. The apparent violations include failure to submit and obtain required final plan approval for certain portions of the marina and harbor facilities, including but not limited to final access and landscaping plans. To date, final plan review for much of the development that has already been constructed at the marina, has not occurred in violation of Special Condition II-A-1. In addition, Condition I-C of the Authorization of the amended permit requires that all work authorized under Amendment Nos. One, Two and Three must be completed by August 15, 2010, unless an extension of time is granted by amendment of the permit. No extension of time has been granted as of the date of this letter. Therefore, any unauthorized development must stop immediately until these requirements are completed, and you are given authorization to proceed with the project.

In addition, during my review and site visits, I determined that you have posted unauthorized signage that threatens the public with criminal legal sanctions for using the dedicated public access areas. For the reasons stated above and further outlined below, you are not in compliance with your BCDC permit.

During our conversation two weeks ago, and via your letter of April 18th, you informed me that you had received written direction from the Redwood City Engineering Department, Fire Department, and Permitting & Planning Departments, to close the dedicated public access areas off from public use, and that these restrictions on public access are due to safety and crime concerns. Based on this information, I have reviewed Use Permit No. 2005-08, dated November 21, 2005, that was issued to you by Redwood City for the Westpoint Harbor project, and I was not able to locate any language in the conditions or findings that seems to preclude public access to the dedicated public access areas. I also consulted with Redwood City officials in the planning, police and fire departments none of whom were aware of any regulatory conditions precluding public access at the site. However, you indicated during our conversation that you will submit copies of letters or other documentation from Redwood City that contain directions that you believe conflict with the public access requirements of BCDC Permit No. 2-02. Please

immediately submit this documentation for our review and consideration. Even if you have received instructions or direction from Redwood City that are somehow inconsistent with your obligations under your BCDC permit, such a circumstance does not entitle you to disregard these obligations.

Violations. The first part of this letter summarizes my observations of current permit status as well as site conditions in relation to the permit requirements. The second part of this letter describes our enforcement policies, the steps needed to bring the permit into compliance, and the options available to you.

- 1. **Permit Expiration**. Condition I-C of the Authorization of Amended Permit No. 2-02 requires that all work authorized under Amendment Nos. 1, 2, and 3 must be completed by August 15, 2010, unless an extension of time is granted by amendment of the permit. No extension of time has been granted as of the date of this letter. Section 10503(e) of the Commission's regulations and Standard Condition IV-E of the Permit state, in part, "If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void."
- 2. **Plan Review**. Permit 2-02 requires plan approval for every successive phase of the project. Special Condition II-A-1 of the permit requires that no work whatsoever shall be commenced until plans for that work have been submitted, reviewed, and approved in writing by or on behalf of the Commission. Though general and conceptual plans were submitted and reviewed by the DRB and approved by BCDC for through Amendments No. 3 of your permit, you have not submitted to BCDC for final approval complete plans, as requested, for any modification or other development authorized by Phase 1B, or subsequent phases of the project, including but not limited to, the boat docks, boat launch ramp, harbormaster building, public access improvements, signage, landscaping, and visual barriers to the adjacent salt pond, in violation of Special Condition II-A-1 of the permit.

In your letter of April 28, 2011, you indicate that four drawing packages control all development on the site that were approved by BCDC and updated for the three amendments. While there are several sets of plans in the file, most have been superseded by subsequent submittals, and only one set has received stamped BCDC approval. The 8-page set entitled "Site Preparation Plan for Westpoint Marina and Boatyard" was stamped and approved by Brad McCrea on November 3, 2005. This set includes demolition, utility, surcharge, and stormwater pollution prevention plans. However, all other plans, including plans entitled "Westpoint Harbor Marina and Boatyard Phase 1," "Westpoint Marina," and "Harbor House Building" as noted in your letter, are either preliminary or conceptual plans, and have not received final plan approval from BCDC.

The Covenants, Conditions and Restrictions ("CC&Rs"), which were recorded on August 20, 2007, along with Permit No. 2-02, include public access survey exhibits, that are sufficient to (and do) designate the locations of all required public access areas on the property. However the plans and surveys simply designate the locations of the public access dedication. The plans necessary for "final approval" for public access areas, showing design specifications (e.g., concrete, decomposed granite, borders) have not yet been submitted and approved as required.

3. Public Access Improvements. Special Condition II-B-2 of the permit requires, in part, that prior to installation of the boat slips, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the new, approximately 298,000-square-foot public access area. These instruments were recorded on August 20, 2007, creating rights in favor of the public commencing no later than the completion of construction of any public access improvements required by the permit and prior to docking any vessels within the marina basin.

Completion of a significant portion of the public access improvements has occurred, and many vessels have been docked in the marina since at least September of 2008. Thus, pursuant to Special Condition II-B-2, the public's right of access to the public access portions of the marina has been triggered. Contrary to these requirements of the permit, during my site visits, I observed several unauthorized signs posted on the property as follows:

In the vicinity of the parking lot entry, you have posted unauthorized signs that read "MEMBERS AND GUESTS ONLY" "PRIVATE PROPERTY / NO TRESPASSING / VIOLATORS WILL BE PROSECUTED," and "WESTPOINT HARBOR / PRIVATE FACILITY/Members and Guests ONLY," and along the required public access perimeter pathway, you have posted unauthorized signs that read "NO TRESPASSING."

These signs, and any other impediments to public access, not to mention the configuration of the as-built public access, were not approved by final plan review, and contradict the letter and the intent of both the public access conditions of the permit and the terms of the recorded public access dedication. Accordingly, the signs must be removed immediately.

In addition, Special Conditions II-B-4a through II-B-4i, of the permit require that prior to the installation of any structures authorized under Phase 1B of the project, including marina berths, the permittee shall install the following improvements as generally shown on Exhibit A of the permit:

- a. A 2,160-square-foot, two-lane, signed, public boat launch;
- b. Fifteen, signed public parking spaces for vehicle and boat trailer parking;
- c. Twelve, signed public parking spaces at various locations around the marina basin, although the entire, approximately 600-space parking lot is open to public parking;
- d. Approximately 85,300 square feet of concrete, decomposed granite, wood, or asphalt (with header board) walkways (all designed to provide connections to adjacent properties), including a 12 to 15-foot-wide path along the majority of the marina basin perimeter and overlooks of Westpoint Slough and the adjacent habitat. The overlooks at the levee entrance to the marina shall include belvederes or other special features;
- e. Ten guest berths, identified with signage;
- f. One public restroom, provided within the Harbormaster's building and two public restrooms in the marina basin area;
- g. Approximately 170,500 square feet of landscaped areas;
- h. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating (not fewer than 20 benches), tables, and trash receptacles (not fewer than 10 trash containers); and

i. No fewer than fifteen public access and, when appropriate, Bay Trail signs, one at the beginning of each path on the site.

During my site visits, I determined that, in violation of Special Condition II-B-4 of the permit, none of the requirements listed above has been completed. Specifically:

- a. The 2,160-square-foot, two-lane, signed, public boat launch was not in place or was not accessible;
- b. None of the parking spaces for vehicle and boat trailer parking were signed for public use;
- c. None of the required public parking signs were installed;
- d. The 85,300 square-foot walkway, although partially constructed, was not completed and includes unauthorized encroachments of fire suppression equipment and at least one utility structure in the pathway;
- e. The required pedestrian access connection from the Pacific Shores Center along the shoreline located at the northwestern section of the property has not been constructed, and the site is presently blocked with unauthorized woven wire fencing mounted on steel posts, with at least one "No Trespassing" sign;
- f. The required ten guest berths were not identified with signage;
- g. The public restroom required within the Harbormaster's building was not signed and open to the public;
- h. Only a portion of the required landscaping was in place along the southern side of the marina, and most of the plants were either in very poor condition or had not survived at all;
- i. Site furnishings, including 20 benches, tables, and 10 trash containers were not in place; and
- j. None of the required fifteen public access or Bay Trail signs were installed.
- k. There is no record of final plan approval for any of the landside and marina work you have completed thus far.
- 4. **Maintenance.** Special Condition II-B-5 of the permit requires that the areas and improvements within the total 298,000-square-foot public access area (plus any additional access area provided with development of the commercial buildings) shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; regular and periodic cleanup of litter and other materials deposited within the access areas and in trash containers; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Special Condition II-B-5 further states that within 30 days after notification by staff, the permit requires the correction of any maintenance deficiency noted in a staff inspection of the site. As noted above and in violation of the above-referenced permit requirements, some of the existing landscape plantings along the pathway were either in poor condition or dead, and it appears that portions of the sprinkler systems are dysfunctional, missing the landscaped areas and, instead, saturating the public access perimeter path along the southern section of the marina.

5. **Signage and Buoys to Alert Boaters of Sensitive Habitat.** Special Condition II-H requires installation and maintenance of buoys adjacent to the navigation channel of Westpoint Slough to identify the "No Wake" speed zone, delineating the center of the channel for adequate draw, and discouraging boats from deviating out of the navigable channel. In addition, Special Condition II-H requires installation and permanent maintenance of a buoy system 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with Redwood Creek. The required buoys shall contain signs informing the public that public access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. Special Condition II-H further requires that the installation of the buoys be coordinated with the San Francisco Bay National Wildlife Refuge with regard to specific wording of the signs and the locations of buoys. During my site visit on April 17, 2011, you pointed out several signs that you indicated were placed by you on Greco Island, warning the public to keep off Greco Island, although the signs were too far away for me to read to from Westpoint Marina. Regardless, I did not observe the buoys required pursuant to Condition II-H.

Special Condition II-I requires installation and permanent maintenance of information signs at the boat launch and other public access areas, advising the public of the access restrictions on Greco Island and other wetlands in the San Francisco Bay National Wildlife Refuge. The permit requires the draft wording and locations of the signs to be coordinated with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the Commission staff. In violation of Special Condition II-I these signs have not been reviewed and approved via plan review by Commission staff, and no such signage was observed at the marina during my site visits.

- 6. **Visual Barriers to Adjacent Salt Pond.** Special Condition II-K requires installation of visual barriers between the active marina areas and the adjacent Cargill salt pond to reduce disturbance to water birds using the salt pond, to be achieved through setbacks (85 to 90 feet in width) or through a combination of reduced setbacks combined with landscaping or other visual barriers (fence slats) that obscure near range views of the salt ponds (less than 100 feet from the human use areas). Portions of the marina facilities, including much of the parking lot areas, are located closer than 85 feet to the salt pond, which adjoins the Westpoint Marina along the entire southern boundary. Therefore, visual barriers are required in these locations, as indicated in Special Condition II-K. The marina is clearly "active" and intrudes into the required 90-foot setback area; therefore, the absence of required visual barriers is in violation of this requirement of your permit.
- 7. **Marine Toilets.** Pursuant to Special Condition II-O-4 of your permit, you are required to make it a condition of the use or occupancy of any berth, that (a) vessels equipped with a marine toilet shall contain an adequate holding tank, incinerator circulation device, or equivalent approved device, to preclude the discharge into the marina, or have the marina toilet inoperable while vessels are moored in the marina; and (b) any violation of the waste discharge requirements of this authorization shall be cause for immediate cancellation of the right of such use or occupancy. The permittee shall submit to the Commission a copy of the berthing agreement, which shall set forth the requirements included in this condition. To date, submittal of this document has not occurred, in violation of Special Condition II-O-4.

- 8. Live-Aboard Boats. Special Condition II-P-1 requires Commission approval for the locations of all live-aboard boats pursuant to Special Condition II-A (Plan Review and approval). Furthermore, Special Condition II-P-5, requires that the permittee receive prior written approval from the Commission, and have completed construction of the restrooms, showers, parking, and garbage disposal facilities on land adequate to serve authorized resident live-aboard and houseboat occupants, pursuant to plans submitted as required in Special Condition II-A, and have submitted a letter to the Commission from the City of Redwood City stating the lease of a berth for houseboat or live-aboard purposes in this marina is consistent with local codes. Final plan approval for the locations of the live-aboard boats, the parking areas, restrooms, showers, garbage disposal facilities, and sewage pump-out stations has not been granted by BCDC, and the required letter from the City of Redwood City has not been received.
- 9. **Certification of Contractor Review.** Special Condition II-U of your permit states: Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas. No submittal of written certification of review by your contractor(s) has/have been submitted to this office, in violation of Special Condition II-U.
- 10. Notifying NOAA to update Nautical Charts. Special Condition II-AA states: "Within 30 days of the completion of the project authorized by this permit, the permittee shall provide written verification to the Commission that it has submitted to the Nautical Data Branch of the National Oceanic and Atmospheric Administration (NOAA) the following: (1) (a) as-built drawings, blueprints or other plans that correctly depict the completed development or, if the project involves the removal of an existing development; (b) a list of the existing development(s) that have been removed and a statement from a qualified engineer or professional salvage company certifying which portions of the development have been removed; (2) the geographic coordinates of the project using a differential geographic positioning system (DGPS) unit or other comparable equipment suitable for providing location on a Nautical Chart; and (3) the permittee's name and contact information (such as a mailing address, telephone number, fax number and/or e-mail address)." As of the date of this letter, we have not received proof that you have submitted the required information to NOAA.

Enforcement Procedures. The failure to comply with any BCDC permit condition is cause for the pursuit of remedies specified in sections 66637 through 66642 of the McAteer-Petris Act and the regulations that implement these statutory provisions, including but not limited to the imposition of standardized civil penalties [see BCDC Regulations (California Code of Regulations, Tit. 14, Div. 5, Section 11386]. As outlined above, you presently have numerous alleged violations at Westpoint Marina.

Standardized Fines. Pursuant to sections 11386(e)(2) and (3) of the Commission's regulations, the failure to comply with BCDC permit conditions may subject you to the following civil penalties: If all of the alleged violations are fully corrected within 35 days of the date of this letter, no civil penalty will apply. If corrected between 36 and 65 days after the date of the mailing of this letter, you may resolve the penalty portion of each alleged violation by paying a standardized fine of \$1,000 for each violation noted above. If corrected between 66 and

95 days after the date of the mailing of this letter, you may resolve the penalty portion of each alleged violation by paying a standardized fine of \$3,000 for each violation noted above. If corrected more than 95 days after the date of the mailing of this letter, you may resolve the penalty portion of each alleged violation by paying a standardized fine of \$3,000 for each violation noted above, plus \$100 per day per violation, from the 96th day to the date each of the violations is resolved in the manner described below and required by the permit.

Steps to Resolve the Alleged Violations. In order to resolve these violations under the standardized fine process, including but not limited to, avoiding standardized fines from accruing, please have the following items (which is a summary of the items discussed in "Violations" above) completed:

In order to avoid standardized civil penalties from accruing, please have the following items completed within 35 days of this letter, which is June 1, 2011:

- 1. **Permit Expiration.** The violation of Condition I-C of the Authorization and Standard Condition IV-E for not completing the project by the completion deadline specified in the amended permit cannot be resolved retroactively. For future construction of marina facilities, including the required public access improvements cited herein, you must obtain a time extension to your amended permit to complete these remaining portions of the development. You may comply with Condition I-C of the Authorization and Standard Condition IV-E by 1) submitting a signed letter requesting permission to amend the time deadline(s) for completion of all work, and 2) subsequently receiving approval from BCDC for an extension of time. Please note that fees for applications seeking after-the-fact approval are doubled. The fee for an amendment to extend the time deadline(s) on all permits is \$150.00, therefore the fee for a time extension to Permit No. 2-02 is \$300.00.
- 2. **Plan Review**. The violation of Special Condition II-A-1 for failure to submit and obtain approval from BCDC for final plans, and obtain final plan approval from BCDC for all of the development authorized, not to mention constructed, through Phase 1B, including but not necessarily limited to the boat docks, boat launch ramp, harbormaster building, public access improvements, signage, landscaping, buoys and visual barriers, can be resolved by submitting complete, final plans for all of the required items to BCDC and obtaining the necessary approvals.
 - Furthermore, any as yet unconstructed public access improvements required by Phase 1B the approved plans must be constructed, and any discrepancies between such final plans and any already constructed public access improvements must be corrected. This violation will not be resolved until the required plans have been submitted, reviewed, and approved by staff.
- 3. **Public Access Improvements.** You have not installed all of the public access amenities required by Special Condition II-B-2 and II-B-4 of your permit. The violation of Special Condition II-B-2 requiring open public access may be resolved by removing all existing unauthorized signs impeding public access to the marina, by removing the fence blocking access between Pacific Shores and Westpoint Marina, and by constructing the Phase 1B required public access amenities. Please note all signage must be in conformance with BCDC Public Access Signage Guidelines, and a copy of the Commission's guidelines is enclosed for your convenience.

4. **Maintenance.** The violation of Special Condition II-B-5 can be resolved by conducting ongoing maintenance of all existing public access areas, after receiving BCDC plan approval and installing the improvements in conformance with approved plans, and thereafter requesting and receiving BCDC staff to perform a site inspection for completion of the work. Prior to implementation, please discuss and gain plan approval of your maintenance approach with BCDC staff.

Maintenance activities on the public access areas shall include, but are not limited to, weeding and planting as necessary all landscaped areas, repairs to all damaged or unmaintained sections of the public access pathways, repairs to the dysfunctional irrigation systems, removal of all encroachments in the public access areas, including the fire suppression equipment and utility structures.

As an alternative to removing or relocating the fire suppression and utility structures, you may submit an amendment application proposing to relocate or expand portions of the public access areas to rectify these violations, while at the same time accommodating the intent of the public access requirements. If the development is approved and implemented in accordance with the amended permit, the violations of Special Condition II-B-5 of your permit will be resolved.

5. **Signage and Buoys to Alert Boaters of Sensitive Habitat.** The violation of Special Condition II-H can be resolved by the installation and maintenance of the required buoys and signage, upon obtaining plan approval, adjacent to the navigation channel of Westpoint Slough to identify the "No Wake" speed zone, which delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel, as well as a permanent buoy system 100 feet from the salt marsh on Greco Island, with signage informing the public that public access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. Please provide evidence that you have coordinated with the San Francisco Bay National Wildlife Refuge on specific wording and locations of buoys, and that the buoys are in place. In addition, please provide evidence that you have coordinated with and received permission from the San Francisco Bay National Wildlife Refuge to place the signage that presently exists on Greco Island.

The violation of Special Condition II-I can be resolved by submitting the required draft wording design as well as the proposed locations of the signs, for review and approval, to BCDC, the U.S. Fish and Wildlife Service, and California Department of Fish and Game. All signage must be in conformance with BCDC Public Access Signage Guidelines. Once the signage is in place, per plan approval by all three agencies, this violation will be resolved.

- 6. **Visual Barriers to Adjacent Salt Pond.** The violation of Special Condition II-K can be resolved by installing the required visual barriers between the active marina areas and the adjacent salt pond, as required in Special Condition II-K of your permit and pursuant to prior BCDC staff plan review and approval.
- 7. **Marine Toilets.** The violation of Special Condition II-O-4 can be resolved by submitting a copy of the berthing agreement to BCDC, and obtaining staff review and approval of the agreement. The agreement must include language requiring that vessels equipped with marine toilets shall contain the adequate devices prescribed in Special Condition II-O-4, which preclude discharges in to the marina, or that the marina toilets are to be disabled while the vessels are moored in the marina. The agreement must also include language stating that any violation of the waste discharge requirements of the authorization shall be cause for immediate cancellation of the right of such use or occupancy.

- 8. **Certification of Contractor Review.** The violation of Special Condition II-U cannot be resolved retroactively. For future construction of marina facilities, please comply the Special Condition II-U by submitting Certifications, signed by the general contractor(s) or contractor(s) in charge of specific portions of the marina development, to show that they have reviewed and understand the requirements of the permit, and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- 9. **Live-Aboard Boats.** The violation of Special Condition II-P-1 and II-P-5 can be resolved by submitting 1) plans for final BCDC staff review and approval, 2) submitting a letter from the City of Redwood City stating the lease of a berth for houseboat or live-aboard purposes in this marina is consistent with local codes, and 3) providing proof that convenient and adequate parking, restrooms, showers, garbage disposal facilities and sewage pump-out stations shall be provided and maintained for use by occupants of the live-aboard boats.
- 10. **Notifying NOAA to Update Nautical Charts.** The violation of Special Condition II-AA can be resolved providing written verification to the Commission that the required updated nautical charts have been submitted to and approved by NOAA.

Penalties. Should you incur penalties as a result of these violations you may resolve the penalty portion of the alleged violations by paying the standardized fines described above. Alternatively, you have the option to seek resolution through a formal enforcement proceeding that would involve a public hearing. If any of your actions are determined to be negligent violations, knowing and intentional violations, or violate a term of a cease and desist order, the law provides that we may refer this matter to the Attorney General, which could subject you to significant court imposed penalties.

Cease and Desist, Permit Revocation, and Civil Penalty Order. If you have not (1) removed all currently-posted and unauthorized privatizing signs from your property and the fence between the Westpoint Marina and Pacific Shores properties, (2) submitted final plans to BCDC for all development authorized through Phase 1B, (3) installed the buoys required by Special Conditions II-H and II-I, (4) submitted a copy of the berthing agreement required by Special Condition II-O-4, (5) submitted plans for final review and all other documents regarding live-aboard boats required by Special Condition II-P-1 and II-P-5; and (6) submitted written verification that nautical updates have been submitted to NOAA, within 35 days of the date of this letter and corrected all of the other alleged violations within 125 days of the date of this letter, you may no longer have the option to settle this matter with standardized fines and we may commence a formal enforcement proceeding that could lead to the issuance of a cease and desist and civil penalty order with an administratively imposed civil penalty of between \$10 and \$1,000 per day up to a maximum of \$30,000 per alleged violation, of which there appears to be no less than ten at this time.

Please also be advised that violations of any of the terms of the permit shall be grounds for permit revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee. If the permit is revoked the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee.

It appears that nearly all of the alleged violations noted above can be quickly and easily corrected, and I would like to work with you to resolve these issues and avoid formal enforcement action by BCDC. Should you have questions or need further explanation on the requirements described in this letter, please contact me at (415) 352-3659 or by email at tsinclair@bcdc.ca.gov.

Sincerely,

TOM SINCLAIR

Coastal Program Analyst

Enc.

TS/gg

cc: Will Travis, Executive Director, BCDC

Charles Jany, Planning Supervisor, City of Redwood City